

Several years ago, I wrote a letter to my children outlining what needs to be done when I die. The information might be helpful to others who find themselves handling matters of a deceased friend or family member, especially if you are an Executor or Administrator of an Estate.



Feel free to share and contact me via email at Diane.Drey@scorevolunteer.org if you have questions.

By Diane Drey

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PURPOSE OF THIS LETTER -

This letter is written to share with you what needs to happen when someone dies. Many of what is shared here are the “practical aspects” related to financial matters.

By knowing what needs to be done, you will not be so reliant on professionals (attorneys and accountants) and can save a lot of money. Knowledge is a beautiful thing.

While preparing this letter, I came across an excellent book that covers the same topic, “When Someone Dies” – by Scott Taylor Smith <https://www.amazon.com/When-Someone-Dies-Practical-Logistics-ebook/dp/B008J4GSGO>. You might want to read it as well.

STEPS THAT NEED TO BE DONE

Calculate The Big Financial Picture

It would be best to determine the deceased person’s net worth on the day they died. This means you need a list of all of their assets and all of their liabilities.

The best way to gather this information is to look at the prior year’s income tax return and gather all bank or brokerage statements. If the person owned a life insurance policy (whole or term), that amount might need to be included. You might ultimately need an appraisal if the person owned real property, such as a house, boat, or car.

When preparing a financial statement, there are three ways to look at an “asset.”

- Book value – the original cost of the asset less the accumulated depreciation and current mortgage balance
- Market Value – an estimate of what the Real Estate would sell for, less selling costs, and the current mortgage balance
- Estate Value – the market value minus “minority interest” or a “lack of marketability.” Discounts.

There is no difference between the three valuation methods for “liquid assets,” such as Cash and Marketable Securities. However, there can be a difference in real property.

The government taxes what is passed to a beneficiary (other than a spouse) when the amount is above an exclusion. On account of this taxation, at the federal and state levels, it is generally best to value assets on the low side if the total amount of the Estate exceeds the exclusion.

Executors and the Executor Fee

When someone dies, the person charged with legally handling their affairs is the “Executor (s) .” If the person dies without a will, the individual who takes over the task of closing down the person’s affairs is called an “Administrator.”

Because the Executor has serious responsibilities, which are often very time-consuming and can stretch over several years, some states mandate that the Executor be paid a fee. Check the Will to see what is specified regarding a fee.

Hire An Estate Attorney (or not) and Hire an Accountant.

An initial step for most executives is to find an attorney to help them with the legal aspects of handling the Will. An Estate attorney is a specialist who understands the procedures that need to be followed, including “probating” the Will, gathering the financial records, paying ongoing expenses for the deceased, and providing the information to the accountant to prepare the many different tax returns. Estate attorneys have experience knowing what assets need valuation reports (real Estate and privately held businesses) and what marketability and minority discounts can be reasonably taken. They also should have experience negotiating with the IRS in case the Estate tax return is audited.

Using an Estate attorney can be quite expensive. They often set their fees based on a percentage of what the deceased owned, which actually pits the attorney’s interests against those better interests of the beneficiaries who want (for tax purposes) a low evaluation of assets. While an attorney can be beneficial in planning your Estate, once the person has died, their Will states what happens to their assets. So, the primary function of an attorney post-death is to act as a bookkeeper, paying bills and consolidating accounts, collecting and distributing income, and working with an accountant to prepare the Estate tax returns. (Attorneys with large firms generally have in-house accountants for tax filings).

Much of this work can be done without an attorney, and you can save thousands of dollars in professional fees, but a few things are necessary –

- The beneficiaries must trust each other (without any reservation.)
- The beneficiaries must understand the tasks needed to administer an Estate, and someone must be willing to handle each task. Generally, the Executor does most of the financial recordkeeping, but other tasks can and should be shared.
- The Estate must have a competent ACCOUNTANT who can handle the tax filings.

When my father died, I interviewed several attorneys before selecting one that I felt was competent. He did a good job, but his fee for managing the Estate, which included three years of bookkeeping, helping prepare the tax returns, indicating which assets needed formal evaluations, and handling an IRS audit that occurred two years after the Estate tax return was filed, cost nearly \$100,000 (in the early 1990’s).

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When my mother died in 2000, my sister and I took a different path; we did nearly everything ourselves. We went to the court to probate the will and got the paperwork to open the estate account, allowing us to pay her bills. We figured out all her assets and what she owed. We hired a professional appraiser to prepare valuation reports for the business and any real estate owned. We worked closely with her accountant to file her last 1040 personal tax return, 706 Estate tax return, and the annual 1041 Estate income tax returns. We did all the bookkeeping ourselves and paid the taxes. We did use an attorney to handle the closing on her condo, but that was it. The total cost of professional fees, including those of the attorney and appraisers, was under \$15,000 in 2000.

If you decide to hire an attorney, you should interview several and hire them for the specific tasks you want accomplished (such as reviewing with you the terms of the Will and the Trusts created based on the Will, handling a real estate closing, etc.).

When you meet with an attorney, always request a detailed explanation of their fees. Traditionally, they quote an hourly fee for senior and junior firm members working on the estate. However, press to get a ballpark estimate of the job's cost. One issue that could trigger a significant cost would be any "disagreement" the beneficiaries have with the Executors.

If you hire an attorney to handle the administration, you can find your accountant to handle the tax return filings. The same principles apply. Ask about their fees upfront, make sure they have lots of experience in preparing Estate tax returns and Trust returns, and make sure they are accessible – (return calls, emails, etc.) because you will have lots of questions. The tax filings need to be done by specific dates.

The steps I am writing below will give you a sense of what needs to be done and should help you decide whether you can handle the Estate primarily on your own.

Probate the Will

When a person dies and has assets of \$30,000 (as of 2016), their Will must be "probated." The process involves proving to the Court the person has died (presenting the death certificate) and having the Will, which names the Executors (individuals who will be in charge of administering the affairs of the decedents) recognized as the truthful document signed by the decedent. When the Court accepts the Will, they will also give legal authority to the "Executors" to act on behalf of the deceased's estate.

In NYS, probating the will is done through the Surrogate Court. You do NOT need an attorney to accomplish this task, and if you don't feel like going down to the court yourself, you can probably hire an "expediter" to get it done. The first step is to Google the current regulations. You will probably need to bring the death certificate (probably issued by the hospital) and the ORIGINAL Will to the Surrogate Court in the jurisdiction where the deceased resides.

Letters of Testamentary

As part of the Probate process, the Court will issue "Letters of Testamentary" – order about ten copies as you will need one for each financial institution where you want to open or close an account.

The Letters allow the Executor (s) to close accounts in the deceased name and transfer the assets to an Estate bank account. Often, an institution may want the letters to be “current” and issued within 60 days, so you may have to return and get additional letters if too much time passes.

I have been told that there can be long delays in NYS before a Will is probated (up to a year). If this is the case, it can cause complications for the Executors because they will not have access to the deceased bank account. A solution might be to have one person pay the Estate bills out of their funds with the understanding that they will be the first to be reimbursed when the funds are available. If one person is paying the Estate bills, they must keep exact records of what was paid for two reasons: to be appropriately reimbursed AND because some of those expenses may be “tax-deductible” from the Estate return.

Inform the IRS you are the Executor.

The Executor must file Form 56 with the IRS indicating that they are the Executor (s) of the Estate.

Obtain an IRS Tax ID Number for the Estate

The Executor (s) should immediately apply for an IRS Estate Tax ID number. This is relatively easy and can be researched online. A tax ID is necessary before any bank account can be opened.

Open an Estate Checking Account

Once the Executor has the tax ID and letters of Testamentary, they should open an Estate checking account. If funds are available from other accounts, transfer enough cash into the checking account to pay the immediate bills.

Pay Immediate Expenses

While it seems honorable that all creditors get paid promptly and thoroughly, the book I mentioned above clarified that credit card companies generally do not pursue Estates for payment. All debts should be paid, but the liquidity of the Estate may influence that decision.

Often, family members will lay out money for death-related expenses (i.e., funeral costs) – this should be reimbursed first and in full.

Consider Paying Off Mortgage Balances

If any owned real estate has a small mortgage balance, consider paying off the mortgage. A benefit is that it will be easier when it comes time to sell the Real Estate if a bank does not have a lien on the property. Additionally, one less ongoing bill will be paid each month. However, before making this decision, you need to weigh the mortgage interest rate against the interest rates you could earn from a low-risk investment. If the mortgage interest rate is higher, paying it off is better.

Marital Claim on Estate

Some states require that you leave a portion of your assets to your spouse. If the Will does not include a provision for the spouse, it is best to check with an attorney on what should be done. If a person dies without a will, each state has a methodology for how the assets are to be divided, which includes protecting the spouse and children.

When will I get my money?

Beneficiaries often ask, “When will I get my money?” While the Estate bank accounts may have cash, I suggest that Executors only use those funds to pay Estate expenses until after the Estate tax return (Form 706) is filed AND the IRS accepts it.

The return is due nine months after the death, and the IRS has three years to audit – so estimate a waiting period of $(9+36) = 45$ months if there is any possibility that Estate Tax will be due. If the tax return is audited, it can quickly add two years to this time frame.

I have heard of situations where the Executor distributed assets before the IRS accepted the tax return, and then there was an audit, which resulted in additional tax being due. The problem was that there needed to be more money left in the Estate to pay it. The executors then had to get money back from the beneficiaries, resulting in a lengthy lawsuit that cost everyone money and caused aggravation. So be patient, and expect the Executors to wait until the entire Estate is settled before making any principal distributions.

When the Estate waits for the IRS approval, the assets in the accounts will be earned income. If the Executors believe it is prudent, they can distribute this income after deducting the income taxes due on the income.

Tax Returns that will be due

One of the most critical tasks of the Executor is to gather all the information necessary to file the tax returns. An accountant should prepare the actual returns, and you should select someone who has done these types of returns many times before. (Also verify in advance the fee they will charge).

Three types of tax returns must be prepared and filed for the Federal Government (IRS). Generally, there will be a corresponding State and City tax return due for my resident state AND any state where I had a business interest.

The returns are:

- **1040 – Personal Income Tax Return** – due on April 15th, following the year the person died. It is a “regular” income tax return (marked “deceased”) that reports all the income earned during the last year of life AND before the assets were moved into the Estate Accounts (whose earnings will be reported under a different tax ID number).

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- **Form 706 – Estate Tax Return** – due precisely nine months after death. Form 706 lists the deceased assets and liabilities, funeral expenses, and amounts given to a spouse. (see below)
- **1041 – Trust Income Tax Return** – due April 15th annually if assets in the Estates earn income; thus, anticipate you will need to file a return annually until all assets are distributed.

Form 1040 and 1041 are relatively easy to complete, provided you have the earning statements (1099 and K-1) for all the accounts in which the Estate or I earned income. (See the attached exhibit listing the forms you must complete for the return.)

Form 706 is a return you have never encountered before and a critical part of the Estate administration, so I am giving more details below.

What you need to know about the Estate Tax Return Form 706 -

In summary, the Estate Tax Return - form 706 lists all the assets and liabilities owned and owed by the deceased and their value.

Current tax law allows the Estate to list the asset value on the date of death or precisely six months later (called the alternative date).

If the Estate will be subject to tax, using the date they were worth the least is essential. The most common factor driving change is the stock market and an extraordinary event, i.e., a lower Manhattan condo would have been worth a lot less on 9/12/2001 than six months earlier.

Funeral Expenses and all debts the deceased owes can be deducted from the estate's total value, so keeping accurate records is essential.

A valuation report must be obtained for any real estate or business holdings. Choose the valuation firm carefully, and before hiring, discuss the discounts they think might be applicable and the capitalization rate they will use if they are evaluating an asset based on their income stream. Naturally, they also discuss their fee; valuation reports can be costly.

Regarding Estate taxes:

Currently, both the federal government and most states impose an inheritance tax.

As of 2024, the federal government allows a generous 13.6-million-dollar exemption, meaning no tax is due if the deceased net worth is less than the exemption. For amounts over the exemption, the tax can be as high as 40%

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The state where the decedent lived may also impose a tax. Some states call it an “estate tax,” and others call it an “inheritance tax.” regardless, it is necessary to know the tax regulations for the state where the deceased resided. For example, in 2023

2023 State Estate Taxes and State Inheritance Taxes

State	Estate Tax Exemption	Estate Tax Rates	Inheritance tax Rates
Connecticut	12,920,000	12%	
Hawaii	5,490,000	10.0% - 20.0%	
Illinois	4,000,000	0.8% - 16.0%	
Iowa			0-6%
Kentucky			0-16%
Maine	6,410,000	8.0% - 12.0%	
Maryland	5,000,000	0.8% - 16.0%	0-10%
Massachusetts	2,000,000	0.8% - 16.0%	
Minnesota	3,000,000	13.0% - 16.0%	
Nebraska			0-15%
New Jersey			0-16%
New York	6,580,000	3.06% - 16.0%	
Oregon	1,000,000	10.0%-16.0%	
Pennsylvania			0-15%
Rhode Island	1,733,264	0.8% - 16.0%	
Vermont	5,000,000	16%	
Washington	2,193,000	10.0% - 20.0%	
District of Columbia	4,528,800	11.2% - 16.0%	

Federal and state laws change annually, so it is essential to find the rules for the year the person dies.

An excellent way to understand what needs to be reported is to print out the 706 IRS form and review it before meeting with an accountant. You will be familiar with the information the accountant needs by seeing what needs to be reported.

Some people believe that if the Estate is not subject to owing any tax, it is unnecessary to file an Estate tax return. While this may legally be correct, if the Estate is close to the exclusion amount, you might protect yourself by filing the return as it will start the 3-year statute of limitations, after which time the IRS cannot re-open the tax return.

Distributing Estate Assets

Three years after the Estate tax return was filed, if you have yet to hear from the IRS, you can feel confident that they have accepted the tax return and will not be doing an audit.

If the IRS audits, they are likely to focus on valuation issues. This might include valuations of real estate, collectibles, and businesses.

If the valuations reported on the 706 are backed up with third-party valuation reports, the negotiations with the IRS will be easier. Hiring an attorney familiar with the process is a good idea if the return is audited. However, my experience dealing with the IRS through many years in business is that they are fair unless they feel you have tried something illegal, such as hiding income or assets.

If there is no audit ... the Executor should distribute the assets as per the Will.

Inherited IRA's -

If you are a beneficiary of an IRA, it is important to NOT cash in that IRA but to "roll it over" to your fiduciary institution as an "inherited IRA." This account is separate from your own IRA or 401K, and there are specific rules for Required Minimum Distributions you must take each year. However, keeping it in an "Inherited IRA" account will avoid taxation until you withdraw the funds.

Stock and Bond Investments

Individuals who inherit stocks and bonds are often afraid to make any changes to the portfolio and keep the stocks and bonds owned by the deceased. There are more prudent ways to approach investing. Instead, the beneficiary should consider when they need or want to use the inherited funds and select a stock/bond diversification ratio appropriate for the funds.

Individuals familiar with Target Date or Asset Allocation funds should consider selling the portfolio and investing in those funds to get the appropriate stock/bond ratio for their needs.

A beneficiary should also be aware that their inherited investments (including stocks and bonds) get the "stepped up" valuation as reported on the Estate Tax Return. Keeping track of that valuation is critical so that when the stocks and bonds are sold, you report the proper basis and pay the appropriate capital gains tax.

OTHER TASKS

Notify Social Security

If the deceased has been receiving Social Security payments, you must notify the Social Security Administration of my death so they don't continue to send payments. I learned that very often, the

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funeral home or hospital will do it automatically. Still, social security will not be happy if they are not informed as they may continue to deposit payments into the deceased account automatically.

Empty and Repurpose the Home

It would be advantageous to tackle this task expeditiously if the home is not being used, but it is unpleasant.

Before you start, take a few photographs of the home as a memory. It will never look the same as things get “distributed.”

I’ve learned over time that regardless of how things are divided, there tends to be a lingering feeling that the stuff was not divided fairly. Sometimes, family members use “stuff” as grounds for an argument, which can become costly or result in resentments that are carried out for years. I hope you avoid this trap – and remember that no matter what... it is just stuff.

A trick I learned is that if all the beneficiaries are present during the “division” and group things together in categories – i.e., paintings, furniture, etc.- each person takes a turn picking one thing. Indeed, you won’t get everything you want, but everyone will have a chance to get something important.

If the beneficiaries cannot all be together, you can do it remotely by taking photos of all the individual items and doing it online. I once helped someone disassemble a household by photographing over 250 items in their house, much of which the person had forgotten he owned.

If you cannot “empty” the home together, and one person (or two) gets stuck with the job, you owe that person a lot of thanks; it is a horrendous task.

Dissolving the Estate

Once the assets have been divided and the final 1041 tax return filed, the Estate Administration can be considered complete.

However, it is essential to hold onto all the paperwork, especially the tax returns, forever. You may need to reference the valuations in the future when you sell the assets, as the valuations will determine your “basis” and be needed to calculate your capital gains taxes.

The Executors can also file IRS form 56 officially indicating that their fiduciary role as Executor has ceased.

CONTACT ME FOR HELP

I hope this information has been helpful.

I am happy to share my experiences managing my parent's estate and answer any questions.

When my father died, we used an expensive attorney to handle matters. He filed the 706 form without proper backup, resulting in a lengthy IRS audit of his assets.

When my mother died, knowing the procedure, we did not hire an Estate attorney at all. My sister and I handled the probate, got the Letters Of Testamentary, opened an Estate bank account, hired consultants to prepare the valuation reports, and did all the accounting ourselves. We did hire an accountant to prepare the proper tax returns. In the end, the IRS accepted the return without a question. We saved thousands of dollars in legal fees and avoided an audit. Experience is a beautiful thing.

If you would like help, email me

at: Diane.Drey@gmail.com or Diane.Drey@scorevolunteer.org